



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
J.F.K. FEDERAL BUILDING, BOSTON, MA 02203

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**Memorandum**

**Date:** November 3, 1998

**Subj:** Bennington, VT Municipal Landfill Superfund Site - Second De Minimis Settlement

**From:** Hugh W. Martinez, OES Senior Attorney  
Edward M. Hathaway, OSRR Remedial Program Manager

**To:** John P. DeVillars, Regional Administrator

**Introduction** This memorandum describes a *de minimis* settlement recently reached between EPA and 4 generators associated with the Bennington Site. The *de minimis* settlors are Bennington Potters, Inc., EHH Realty Corp., Graphitek of Vermont, Inc., and Lauzon Machine & Engineering, Inc. These settlors have agreed to settle liability claims for a full release under Superfund *de minimis* party settlement provisions in Section 122(g). We recommend that you sign the Consent Decree so it can be forwarded to DOJ for filing. This settlement is fully consistent with the main Consent Decree settlement at this Site, finalized in August, 1997 and described below.

**The Site** The Bennington Municipal Landfill is located on Houghton Lane in Bennington, Vermont. The Site is 3 miles north of Bennington center and comprises about 15 acres of a 100-acre parcel. The Site is bordered to the north by an inactive sand and gravel pit, to the west by Town-owned, undeveloped land, to the east by a wetland area where a brook originates, and to the south by Houghton Lane. A bedrock water source known as Morgan Spring is about 3 miles south of the Site and is regularly used to supplement the Bennington municipal system as the sole source for private water supplies. Approximately 2,200 residents use private wells within three miles of the Site, including 19 wells within one-half mile of the Site.

**Site Operation** The Town began operating the Landfill in 1969 and received residential, commercial, and industrial solid and liquid wastes. Solid wastes were disposed of at the Site from 1969 to 1987. From 1969 to 1975, liquid industrial wastes were disposed of in an unlined lagoon, a practice the Town discontinued in 1975 due to concerns raised by Vermont regarding potential threats to drinking water. After attempts to solidify the liquids in the lagoon failed, the lagoon was covered with landfill material.

Approximately 500,000 cubic yards of solid waste were disposed of in the Landfill during its operation. The Town closed the Landfill in 1987 and now uses it for transfer, recycling, and sorting operations only.

**The Settlers** The above-mentioned 4 settlors are small businesses that operated in Bennington during the years the Landfill was open. Bennington Potters and Lauzon Machine were named by EPA as PRPs in 1991. EHH Realty and Graphitek were not formally named by EPA but were brought into this settlement by the PRPs. Each of the settlors is alleged to have contributed small amounts of hazardous waste to the Site. Specifically, based on our analysis, each of these latest settlor's hazardous waste contribution is estimated to have been less than 1% of the total waste disposed of at the Site.

In exchange for a *de minimis* release under Section 122(g), the settlors each have agreed to pay from \$75,000 (Lauzon) to \$20,000 (Graphitek) for a total settlement amount of \$175,000. Under an agreement established at the time of the prior settlement, the amounts paid pursuant to this Consent Decree will be shared by the government and the non-*de minimis* PRPs who will get 21% and 79%, respectively. The PRPs' share will be directed to cleanup costs.

**The Initial Settlement** This settlement follows an initial Consent Decree settlement, approved by the U.S. District Court in Vermont in August, 1997, between the government and 19 PRPs, 14 of which EPA determined to be *de minimis*. The first settlement was the result of 2 years of complicated negotiations between the PRP group, EPA, DOJ, the U.S. Fish and Wildlife Service, and the State of Vermont. Among other things, the settlement required the 5 non-*de minimis*, "performing" PRPs to carry out a Non-Time Critical Removal Action or "NTCRA" at the Site worth around \$10,000,000. The NTCRA consists of constructing and maintaining a landfill cap, leachate collection system, and groundwater diversion trench, excavating PCB-contaminated soils and sediments, implementing Site restrictions to prevent future use of the groundwater, and restoring a noncontiguous parcel of Bennington-owned property as compensation for damages to natural resources. At this time, the majority of that work has been completed.

**Recent Record of Decision** On September 29, 1998, EPA issued a ROD for the Bennington Site. The ROD provides that no further action is necessary at the Site. Specifically, the ROD finds the actions taken under the NTCRA to have adequately controlled the principle and low-level threats posed by the Site. In addition to the actions referenced above, the ROD also takes into account the assurance of long-term operation and maintenance of the NTCRA under the initial Consent Decree and the State's reclassification of groundwater at the Site to restrict future use. Based on regional policy, EPA intends to perform 5-year reviews of the protectiveness of the cleanup actions taken at the Bennington Site.

**Major Issues** There are no major outstanding issues.

**Headquarters Perspective or Involvement** During the previous Consent Decree negotiations, the Office of Enforcement and Compliance Assurance, EPA Headquarters, urged Region 1 to secure additional *de minimis* settlements at this Site, if possible. The accompanying Consent Decree fully supports that wish. The case team will provide OECA representatives with a copy of this Consent Decree, however, Headquarters' concurrence on this settlement is not required.

**Public Involvement** EPA has made regular attempts to keep the public informed of EPA actions and decisions at this Site. There has not been any significant level of public interest in the Site since EPA issued the proposed plan for the NTCRA in 1994. EPA will issue a press release upon lodging of the Consent Decree and a public information fact sheet to describe the Site status.

**Media or Congressional Involvement** There has not been any significant Congressional or media activity during the negotiations for this latest *de minimis* Consent Decree.

**State Coordination** The Vermont Attorney General's Office was active in the negotiations and already has signed the Consent Decree.

**Recommendation** We recommend that you sign the Consent Decree accompanying this memorandum so that we can forward the settlement to DOJ for lodging.

**Contacts**

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OES-Reg Legal (565-4526)

Edward M. Hathaway, RPM  
OSRR II (918-1372)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

2003

UNITED STATES OF AMERICA,  
and STATE OF VERMONT

Plaintiffs,

v.

BENNINGTON POTTERS, INC., EHH REALTY  
CORP., GRAPHITEK OF VERMONT, INC.,  
AND LAUZON MACHINE & ENGINEERING,  
INC.,

Defendants.

Civ. Nos. \_\_\_\_\_

and \_\_\_\_\_

CONSENT DECREE

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## I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

C. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred and to be incurred by EPA and the Department of Justice for response actions at the Bennington Landfill Superfund Site in Bennington, Vermont ("Site"), together with accrued interest; and (2) performance of response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

D. The State of Vermont also has filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and 10 Vt.Stat. Ann. Ch. 159, § 6615.

E. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Vermont (the "State") on July 24, 1995, of negotiations with potentially responsible parties regarding the implementation of the non-time critical removal action ("NTCRA") for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

F. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the federal natural resource trustee(s) on July 20, 1995, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989, 54 Fed. Reg. 13,295.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, 12 Potentially Responsible Parties ("PRPs") commenced in June 1991, a Remedial Investigation and Feasibility Study ("RI/FS") under EPA oversight, pursuant to two Administrative Orders by Consent, EPA Docket Nos. CERCLA I-91-1093 and CERCLA I-91-1094, for the Site pursuant to 40 C.F.R. § 300.430.

I. Based upon the preliminary results of the RI/FS, the EPA required the parties to the RI/FS Administrative Orders to prepare an engineering evaluation and cost analysis ("EE/CA"). EPA signed an approval memorandum for the EE/CA in May 1994. Based upon the EE/CA, the public was provided the opportunity to comment on a proposed NTCRA for the Site. EPA held a 45-day public comment period and a transcribed public hearing was held on September 13, 1994. After consideration of the comments received, EPA signed and issued an Action Memorandum on December 23, 1994, selecting the proposed alternative as the NTCRA. Before EPA signed the Action Memorandum, the State had a reasonable opportunity to review and comment on the decision. The NTCRA authorized the following response actions at the

Site: (1) construction of a composite barrier low permeability cap; (2) excavation, from the drainage pond and underdrain discharge pipe, of those contaminated soils and sediments which exceed the action levels; (3) consolidation, in the existing landfill, of such contaminated soils and sediments; (4) gas management; (5) isolation of the upgradient groundwater from the landfill; (6) monitoring; and (7) post-removal site control of the completed NTCRA.

J. On August 18, 1997, the United States District Court for the District of Vermont entered a Consent Decree (the "1997 Decree"), to which the United States, the State of Vermont, and 19 defendants were parties. The 1997 Decree required five PRPs to implement the NTCRA at the Site and to implement a wetlands restoration project on a parcel of property owned by the Town of Bennington. The 1997 Decree also provided for 14 of the 19 PRPs collectively to pay \$1.8 million and provided them with a *de minimis* release. Four parties, Bennington Pottery, Inc., EHH Realty Corporation, Graphitek of Vermont, Inc., and Lauzon Machine & Engineering, Inc., were not parties to the 1997 Decree, and now seek to resolve their alleged liability at the Site.

K. The Regional Administrator of EPA, Region I, or his delegate, has determined the following: (1) prompt settlement with each Settling Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1); (2) the payment to be made by each Settling Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is between \$10 million and \$15 million; and, (3) the amount, if any, of hazardous substances contributed to the Site by each Settling De Minimis Defendant and the toxic or other hazardous effects of the hazardous substance contributed to the Site by each Settling Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). The amount of hazardous substances contributed to the Site by each Settling Defendant does not exceed 1.5% of the hazardous substances at the Site and the hazardous substances, if any, contributed by each Settling Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

L. The United States Department of Interior ("DOI") has identified and prepared a preliminary evaluation of potential damages relating to possible injury to, destruction of, or loss of natural resources under its trusteeship in connection with the Site.

M. Solely for the purposes of Section 113(j) of CERCLA, the NTCRA selected by the Action Memorandum and the work to be performed by the Performing Settling Defendants under the 1997 Decree shall constitute a response action taken or ordered by the President.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

O. The Settling Defendants do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints.

P. The United States, the State of Vermont and Settling Defendants agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Settling Defendants.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, and DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. The complaints state claims upon which relief may be granted.

## **III. PARTIES BOUND**

2. This Consent Decree applies to and is binding upon the United States, on behalf of EPA, DOI and NOAA, the State, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

## **IV. STATEMENT OF PURPOSE**

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. To reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Settling Defendants to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. To simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a number of potentially responsible parties from further involvement at the Site; and

c. To obtain settlement with Settling Defendants for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties and to provide for full and complete contribution protection for Settling Defendants with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

## **V. DEFINITIONS**

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Action Memorandum" shall mean the decision document signed by the EPA New England Regional Administrator on December 23, 1994, selecting the non-time-critical removal action for the Bennington Landfill Site.

"Bennington Landfill Site Group" shall mean the group comprising the five parties, B. Co. (f/k/a Bijur Lubricating Corp.), Eveready Battery Company, Inc., Johnson Controls Battery

Group, Inc., Textron, Inc. and Town of Bennington, who are performing response actions at the Site.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"DOI" shall mean the United States Department of Interior and any successor departments, agencies or instrumentalities thereof.

"DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities thereof.

"Effective Date" shall mean the effective date of this Consent Decree as provided in Paragraph 22.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"Natural Resource Damages" shall mean damages recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all natural resources at the Site under the trusteeship of DOI, NOAA, or the State, including the reasonable costs of assessing such injury, destruction, or loss.

"1997 Decree" shall mean the Consent Decree regarding to the Site entered on August 18, 1997 by the United States District Court for the District of Vermont in, *U.S. and State of Vermont v. Town of Bennington, et al.*, Civ. Nos. 2:97-CV-197 and 2:97-CV-208 (D.Vt.).

"NOAA" shall mean the National Oceanic and Atmospheric Administration, and any successor departments, agencies, or instrumentalities thereof.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

"Parties" shall mean the United States, the State of Vermont, and the Settling Defendants.

"Plaintiffs" shall mean the United States and the State.

"Settling Defendants" shall mean Bennington Potters, Inc., E.H. Holden Corporation, as successor in interest to Fairdale Farms, Inc. and EHH Realty Corporation, Graphitek of Vermont, Inc., and Lauzon Machine & Engineering, Inc.

"Site" shall mean the Bennington Landfill Superfund Site, encompassing approximately 28 acres of land located on Houghton Lane approximately three miles north of the town center in Bennington, Vermont, and shown on the map attached as Appendix B.

"State" shall mean the State of Vermont, acting through its Agency of Natural Resources.

"United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "hazardous material" under 10 Vt. Stat. Ann. § 6602(16).

## VI. PAYMENTS

5. Each Settling Defendant shall, within 30 days of the Effective Date, pay to the United States, the amount specified for that Settling Defendant in Appendix A, Column A, plus Interest that has accrued on such amount from October 1, 1998 until the date of payment. The payment shall be made by certified check made payable to "EPA Hazardous Substances Superfund". The check shall reference "EPA Site/Spill ID No. 01C2". Each check shall be accompanied by a transmittal letter referencing "DJ No. 90-11-3-868A/1", "EPA Site/Spill ID No. 01C2", and the name of the Settling Defendant making payment. The checks and transmittal letters required by this Paragraph shall be sent by certified mail, return receipt requested to:

EPA Superfund  
Superfund Accounting, Region I  
P.O. Box 360197M  
Pittsburgh, PA 15251

Copies of the checks and transmittal letters required by this Paragraph shall be sent to:

Edward M. Hathaway  
Remedial Project Manager  
U.S. EPA Region I - New England  
JFK Federal Building (HBT)  
Boston, MA 02203-2211

Chief, Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Ref.: 90-11-3-868A/1

6. Each Settling Defendant shall, within 30 days of the Effective Date, pay to the Bennington Landfill Site Group the amount specified for that Settling Defendant in Appendix A, Column B, plus Interest that has accrued on such amount from October 1, 1998 until the date of payment. The payment shall be made by certified check made payable to "Bennington Landfill Site Group". Each check shall be accompanied by a transmittal letter referencing "DJ No. 90-11-3-868A/1", "EPA Site/Spill ID No. 01C2", and the name of the Settling Defendant making payment. The check and the transmittal letter shall be sent to counsel for the Bennington Landfill Site Group:



David P. Rosenblatt, Esquire  
Burns & Levinson LLP  
125 Summer Street  
Boston, MA 02110

Copies of the check and transmittal letter required by this Paragraph shall be sent to the United States in accordance with Paragraph 5.

7. The Settling Defendants' payments to the United States and the Bennington Landfill Site Group include amounts for all past and future response costs incurred or expected to be incurred at the Site by Plaintiffs or any private party, amounts for all Natural Resource Damages and premiums to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the Plaintiffs or by any private party, will exceed the estimated total response costs upon which Settling Defendants' payments are based.

#### VII. FAILURE TO MAKE PAYMENT

8. If any Settling Defendant fails to make full payment as specified in Paragraphs 5 and 6, that Settling Defendant shall pay stipulated penalties to the United States in the following amounts:

Penalty Per Violation Per Day	Period of Noncompliance
\$750	1st through 14th day
\$1,500	15th day and beyond

All payments to the United States under this Paragraph shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA Region 1, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill Identification #01C2, the DOJ Case Number 90-11-3-868A/1, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to the EPA and the Department of Justice at the addresses set forth in Paragraph 5. If any Settling Defendant fails to make full payment as specified in Paragraphs 5 and 6, that Settling Defendant shall pay Interest on the unpaid balance. In addition, if any Settling Defendant fails to make full payment as required by Paragraphs 5 and 6, the United States may, in addition to any other available remedies or sanctions, bring an action against that Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. 9622(l), for failure to make timely payment.

#### VIII. CERTIFICATION OF SETTLING DEFENDANTS

9. By signing this Consent Decree, each Settling Defendant certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession,

generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

10. Should any Settling Defendant discover or come to possess after the date of its signature to this Consent Decree, any information, not previously provided to the EPA, the State, or to the Bennington Landfill Site Group, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site, the Settling Defendant shall immediately notify EPA, the State and the Bennington Landfill Site Group of the new information.

#### **IX. PLAINTIFFS' COVENANTS NOT TO SUE**

11. In consideration of the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 12 and 13, the United States covenants not to sue or take administrative action against any of the Settling Defendants pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site. In consideration of the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 12 and 13, the State covenants not to sue or take administrative action against any of the Settling Defendants pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, or 10 Vt.Stat.Ann. Ch. 159, § 6615, relating to the Site. With respect to present and future liability, the covenants not to sue set forth in this Paragraph shall take effect for each Settling Defendant upon receipt of that Settling Defendant's payments to the Bennington Landfill Site Group and the United States as required by Paragraphs 5 and 6 of this Consent Decree. With respect to each Settling Defendant, individually, the United States' and the State's covenants not to sue are conditioned upon: (a) the satisfactory performance by the Settling Defendant of all obligations under this Consent Decree; and (b) the veracity of the information provided to EPA by the Settling Defendant relating to the Settling Defendant's involvement with the Site. The covenants not to sue under this Paragraph extend only to the Settling Defendants and do not extend to any other person.

#### **X. PLAINTIFFS' RESERVATION OF RIGHTS**

12. The covenants not to sue set forth in Paragraph 11 do not pertain to any matters other than those expressly specified in Paragraph 11. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters including but not limited to, the following:

a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

c. liability for future disposal of Waste Material at the Site, other than as provided in the Action Memorandum, or otherwise ordered by EPA;

d. criminal liability; and

- e. liability for violations of federal or state law.

13. Notwithstanding any other provision in this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual Settling Defendant in this action or in a new action or to issue an administrative order to any individual Settling Defendant seeking to compel that Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States or the State for additional costs of response, if information is discovered which indicates that such Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Settling Defendant no longer qualifies as a *De Minimis* party at the Site because such party contributed greater than 1.5% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

#### XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

14. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State or their contractors or employees with respect to the Site or this Consent Decree including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

- b. any claims for costs, fees, or expenses incurred in this action or related to the Site, including claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended;

- c. any claim arising out of response activities at the Site; and

- d. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

15. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against each Settling Defendant in this Decree and each settling defendant in the 1997 Decree with regard to the Site pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613. Settling Defendants waive all claims and causes of action for Matters Addressed, including for contribution, against any person, other than insurance carriers. The Settling Defendants each reserve any rights, defenses, claims, demands, and causes of action, other than those referenced in the preceding sentence, which each Settling Defendant may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

16. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

#### XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

17. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. The Plaintiffs reserve any and all rights (including but not limited to, any right to contribution), defenses, claims, demands, and causes of action

which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

18. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5), for "Matters Addressed" in this Consent Decree. The "Matters Addressed" in this Consent Decree are (a) all response actions taken and to be taken by the Plaintiffs and by private parties; (b) all response costs incurred and to be incurred by the Plaintiffs and by private parties in connection with the Site; and (c) all Natural Resource Damages, at or in connection with the Site.

### XIII. INTEGRATION/APPENDICES

19. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is a list of the Settling Defendants' settlement payments.

"Appendix B" is a map of the Site.

### XIV. PUBLIC COMMENT

20. This Consent Decree shall be subject to a thirty (30) day public comment period consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the Consent Decree if comments received disclose facts or considerations which show that the Consent Decree is inappropriate, improper or inadequate. The State may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates state law. The United States reserves the right to challenge in court the State withdrawal from the Consent Decree, including the right to argue that the requirements of state law have been waived, pre-empted or otherwise rendered inapplicable by federal law. The State reserves the right to oppose the United States' position taken in opposition to the proposed withdrawal. In addition, in the event of the United States' withdrawal from this Consent Decree, the State reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice.

21. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

### XV. EFFECTIVE DATE

22. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

### XVI. RETENTION OF JURISDICTION

23. This Court retains jurisdiction over this matter for interpreting or enforcing the terms of this Consent Decree.

### XVII. SIGNATORIES/SERVICE

24. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the

United States Department of Justice, and the Attorney General for the State of Vermont certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such party to this document.

25. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

26. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

27. The United States and the State hereby stipulate to an extension of time to answer the complaints in favor of each Settling Defendant, which extension shall run until 30 days after the United States or the State withdraws or withholds their consent pursuant to Paragraph 20 or the Court declines to enter this Consent Decree.

#### XVIII. FINAL JUDGMENT

28. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1998.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Bennington Potters, Inc., et al.*, relating to the Bennington Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA:

\_\_\_\_\_  
Date

\_\_\_\_\_  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

\_\_\_\_\_  
Date

\_\_\_\_\_  
MARK A. GALLAGHER  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-5405

CHARLES R. TETZLAFF  
United States Attorney for the District of Vermont

\_\_\_\_\_  
Date

\_\_\_\_\_  
JOSEPH R. PERELLA  
Assistant U.S. Attorney  
P.O. Box 570  
Burlington, VT 05402-0570  
(802) 951-6725

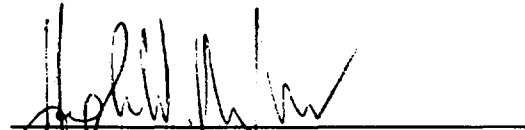
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Bennington Potters, Inc., et al.*, relating to the Bennington Landfill Superfund Site.

11/4/98  
Date



JOHN P. DEVILLARS  
Regional Administrator, Region I  
U.S. Environmental Protection Agency - Region I  
J.F.K. Federal Building (RAA)  
Boston, MA 02203

11-2-98  
Date



HUGH W. MARTINEZ  
Senior Attorney  
U.S. Environmental Protection Agency - Region I  
J.F.K. Federal Building (SEL)  
Boston, MA 02203

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Bennington Potters, Inc., et al.*, relating to the Bennington Landfill Superfund Site.

FOR THE STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

9/24/98  
Date

By:

Mary K. McCabe  
MARY K. McCABE  
Assistant Attorney General  
State of Vermont  
109 State Street  
Montpelier, VT 05609-1601  
(802) 828-5508

9/18/98  
Date

By:

Canute E. Dalmasse  
CANUTE E. DALMASSE, Commissioner  
Vermont Department of Environmental Conservation  
103 South Main Street  
Waterbury, VT 05676  
(802) 241-3800



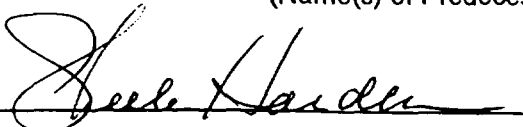
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Bennington Potters, Inc., et al.*, relating to the Bennington Landfill Superfund Site.

FOR Bennington Potters, Inc., FOR  
(Name of Settling Defendant)

ITSELF, AND ON BEHALF OF \_\_\_\_\_  
(Name(s) of Predecessor(s))

9/28/98  
Date

Signature:



Name (print):

Sheela Harden

Title:

Vice President

Address:

Bennington Potters, Inc.

324 County Street

P.O. Box 199

Bennington, VT 05201

Agent Authorized to Accept Service on Behalf of Above-signed Party:\*

Name (print):

Liam L. Murphy, Esq.

Title:

Partner

Company:

Langrock Sperry & Wool

Address:

275 College Street, P.O. Box 721

Burlington, VT 05402-0721

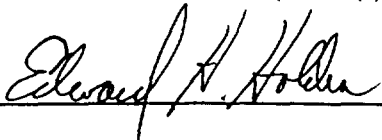
Phone No.:

(802) 864-0217

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Bennington Potters, Inc., et al.*, relating to the Bennington Landfill Superfund Site.

FOR E.H. Holden Corporation, FOR  
(Name of Settling Defendant)  
Fairdale Farms and/or  
ITSELF, AND ON BEHALF OF EHH Realty Corp.  
(Name(s) of Predecessor(s))

9/30/98  
Date

Signature:   
Name (print): Edward H. Holden  
Title: Duly Authorized Officer & Representative  
Address: E.H. Holden Corporation  
Post Office Box 30  
Bennington, VT 05201-0030

Agent Authorized to Accept Service on Behalf of Above-signed Party:\*

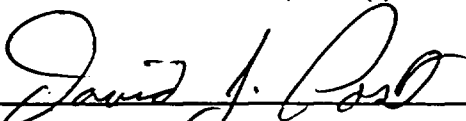
Name (print): David L. Cleary, Esq.  
Title: Attorney  
Company: Cleary Shahi Associates, P.C.  
Address: 110 Merchants Row  
Post Office Box 6740  
Rutland, VT 05702-6740  
Phone No.: (802) 775-8800

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Bennington Potters, Inc., et al.*, relating to the Bennington Landfill Superfund Site.

FOR Graphitek of Vermont, Inc., FOR  
(Name of Settling Defendant)

ITSELF, AND ON BEHALF OF \_\_\_\_\_  
(Name(s) of Predecessor(s))

9/11/98  
Date

Signature: 

Name (print): David J. Post

Title: President and duly authorized agent

Address: P.O. Box 69

Bennington, VT 05201

Agent Authorized to Accept Service on Behalf of Above-signed Party:\*

Name (print): David J. Post

Title: President and duly authorized agent

Company: Graphitek of Vermont, Inc.

Address: P.O. Box 69

Bennington, VT 05201

Phone No.: (802) 442-3183

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Bennington Potters, Inc., et al.*, relating to the Bennington Landfill Superfund Site.

*Lanzoni Machine & Engineering, Inc.*  
FOR *Larry E. Lanzoni*, FOR  
(Name of Settling Defendant)  
ITSELF, AND ON BEHALF OF -  
(Name(s) of Predecessor(s))

Date

*SEPTEMBER 17, 1998*

Signature:

*Larry E. Lanzoni*

Name (print):

*Larry E. Lanzoni*

Title:

*President*

Address:

*757 Main St.*

*Bennington, Vt 05201*

Agent Authorized to Accept Service on Behalf of Above-signed Party:\*

Name (print):

Title:

Company:

Address:

Phone No.:

## APPENDIX A

### Settling Defendants' Payment Amounts

Name	Column A Payment to U.S.	Column B Payment to BLSG
Bennington Potters, Inc.	\$10,500	\$39,500
EHH Realty Corp.	\$6,300	\$23,700
Graphitek of Vermont, Inc.	\$4,200	\$15,800
Lauzon Machine & Engineering, Inc.	\$15,750	\$59,250

## APPENDIX B

### MAP OF SITE